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In re Application of: ENDOU, Hitoshi, et al.	:	
U.S. Application No.: 09/787,194	:	DECISION ON PETITION
Int'l Application No: PCT/JP99/05120	:	(37 CFR 1.137(b))
Int'l Filing Date: 20 September 1999	:	
Priority Date: 18 September 1998	:	
Atty Docket No.: 55620 (71526)	:	
For: CEREBRAL ORGANIC ANION	:	
TRANSPORTER AND ITS GENE	:	

This decision is issued in response to applicant's petition for revival under 37 CFR 1.137(b), filed 27 September 2007. Applicant has paid the required petition fee.

BACKGROUND

On 20 September 1999, applicants filed international application PCT/JP99/05120. The application claimed a priority date of 18 September 1998, and it designated the United States. On 30 March 2000, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO).

A Demand electing the United States was filed on 14 April 2000, prior to the expiration of thirty months from the priority date. Accordingly, the deadline for filing the basic national fee was extended to thirty months from the priority date, i.e., 18 March 2001.

On 15 March 2001, applicant filed a Transmittal Letter requesting entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and an English translation of the international application.

On 30 April 2001, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497, the surcharge for filing the oath or declaration later than thirty months after the priority date, and sequence listing materials, including a computer readable form (CRF) of the sequence listing.

On 06 July 2001, applicants filed a response to the Notification Of Missing Requirements (with required one-month extension fee). The submission included an executed declaration in

compliance with 37 CFR 1.497 and the required surcharge payment. The submission did not, however, include the required sequence listing materials.

On 25 July 2001, the DO/EO/US mailed a "Notification Of Defective Response" (Form PCT/DO/EO/916) indicating that applicants' 06 July 2001 response was defective for failure to include all the materials required by the Notification Of Missing Requirements, including the diskette and statement regarding the sequence listing.

On 24 September 2003, the DO/EO/US mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) indicating that the present application was abandoned for failure to properly respond to the Notification Of Missing Requirements.

On 06 September 2007, applicants filed a "Second Status Inquiry," with accompanying materials, including a copy of the response to the Notification Of Missing Requirements originally filed 06 July 2001, and a copy of a first "Status Inquiry" and accompanying change of correspondence address purportedly filed 24 August 2005.

On 27 September 2007, applicants filed the petition for revival under 37 CFR 1.137(b) considered herein, with accompanying materials.

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).¹

With respect to item (1), the "required reply" here is a proper reply to the Notification Of Missing Requirements mailed 30 April 2001. As noted above, applicant submitted the executed declaration and surcharge required by the Notification Of Missing Requirements on 06 July 2001. Thus, the materials needed to complete the "required reply" are sequence listing materials required in the Notification Of Missing Requirements, including the CRF of the sequence listing. The present petition includes as Exhibit "C" a copy of sequence listing materials purportedly filed herein on 23 October 2001. However, the USPTO has no record of receiving such materials, nor does the USPTO have a record of receiving the CRF of the sequence listing purportedly included with such filing. Because the present petition was not accompanied by all required sequence listing materials, including the CRF of the sequence listing, the "required reply" has not been submitted. Accordingly, item (1) of a grantable petition is not satisfied on the present record.

With respect to item (2), applicants have provided the required petition fee. Item (2) is therefore satisfied.

¹ Item (4) does not apply to the present application.

With respect to item (3), the present petition includes a statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional," as well as an accompanying statement entitled "Additional Sheets Containing Statements Establishing Unintentional Delay" discussing the delay herein (which includes a statement that the Notification Of Abandonment mailed herein was not received by applicants). It is noted that the present application has been abandoned for an extended period of time. The USPTO is relying on petitioner's duty of candor and good faith in accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice Procedure, 62 Fed. Reg. At 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing statement required by 37 CFR 1.137(b) to the Patent and Trademark Office). Based on this reliance, the statements provided herein are accepted as satisfying the requirements of 37 CFR 1.137(b).

Based on the above, applicants have not satisfied all the requirements for a grantable petition under 37 CFR 1.137(b). Accordingly, revival of the application is not appropriate on the present record.

CONCLUSION

Applicant's petition for revival under 37 CFR 1.137(b) is **DISMISSED** without prejudice for failure to satisfy all the requirements of a grantable petition.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any request for reconsideration should be entitled "Renewed Petition Under 37 CFR 1.137(b)" and it must include the materials required to satisfy element (1) of a grantable petition, that is the sequence listing materials required by the Notification Of Missing Requirements mailed 30 April 2001, including a CRF of the sequence listing. No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration



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